

SULLIVAN, Senior Judge

Jeffrey L. Finley (Finley) pleaded guilty to Count I, the murder of Scott Severns (Severns); to Count II Attempted Robbery of Severns, as a Class A felony and to Count III, Felony Murder. The trial court, however, entered judgments of conviction only as to Count I and Count II. We affirm.

Finley raises three issues for our review, which we consolidate and restate as: Whether Finley's sentence was inappropriate under Ind. App. Rule 7(B).

Following a sentencing hearing, Finley was sentenced to the advisory sentence of fifty-five years on the murder conviction and a consecutive ten-year advisory sentence on the Attempted Robbery conviction as a Class B felony.¹

Upon appeal, Finley challenges the sentences asserting that the trial court did not give due consideration to his age of seventeen, to his lack of a criminal record or to his stated remorse. He also claims that the court erred in imposing consecutive sentences.

At the outset, we note that because the offenses in this case were committed after the April 25, 2005, revisions to the sentencing statutes, we review Finley's sentence under the advisory sentencing scheme. *See Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). When evaluating sentencing challenges under the advisory sentencing scheme, we first confirm that the trial court issued the required sentencing statement, which includes a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* at 490. The most obvious vehicle for setting forth the reasons for

¹ The court apparently was concerned with double jeopardy considerations because Severn's "bodily injury" as a requisite for an A felony conviction for the Attempted Robbery was the same injury causing Severn's death. The B felony conviction was premised upon Finley's use of a deadly weapon. See Ind. Code § 35-42-5-1.

imposing the particular sentence would seem to be a recitation of aggravating and mitigating circumstances deemed to be significant.

Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

In the present case, the court, in a thorough, comprehensive, and detailed sentencing statement, found as an aggravating circumstance that Finley had a “conscious objective to kill the victim.” (App. at 14). In doing so, the court specifically made reference to Finley’s own statement at the guilty plea hearing that when he pulled the trigger he intended to shoot the victim.² The court noted that this, standing alone, does not suffice to demonstrate a conscious objective to kill. However, the court noted the circumstances of the shooting and more particularly the fact that Finley fired six shots with one bullet striking the victim in the face from a distance of between one to three

² It was Finley’s position that he only fired when shot by the victim, who happened to be an armed but off-duty police officer. Mr. Severn’s companion, who was also present, stated that Severn appeared to make a movement toward his weapon but that Finley fired first.

feet, and three bullets striking the victim's back. From this, the court reasonably concluded that Finley had a conscious objective to kill Mr. Severns.

It is apparent that the sentencing court did consider Finley's age of seventeen. However, the court was not required to give substantial significance to Finley's age. See Carter v. State, 711 N.E.2d 835, 842 (Ind. 1999), in which the defendant was "fourteen . . . [not] sixteen or seventeen" and the Supreme Court reduced the sentence from sixty to fifty years.

In Monegan v. State, 756 N.E.2d 499 (Ind. 2001) our Supreme Court considered a murder sentence for a seventeen year old and noted that age is neither a statutory nor per se mitigating factor. In this light, and with the considerations of App. Rule 7(B) in mind, we hold that the court did not err in declining to attribute the same mitigating weight to Finley's age as he would have preferred.

The court also attributed "modest weight" to Finley's lack of a criminal record. (App. at 18). No weight was given to the defendant's assertion that he was not "a street kid, nor part of a gang" (App. Br 4), nor to the fact that he went to church.

Again, in light of the considerations pertinent to App. Rule 7(B), we conclude that this determination is not unreasonable in light of the court's accurate observation that "the defendant chose to begin his criminal career by attempting to rob someone as he did,

for so frivolous a reason as offered by the defendant³, and his choice to use a deadly weapon in doing so” (App. at 19).

In the same vein, the court observed that Finley’s expression of remorse was “more regret and distress that his actions had put him in the situation in which he found himself rather than for the wrong and harm he had done.” (App. at 19). This doubting reception of Finley’s expression of remorse was not unreasonable. Pickens v. State, 767 N.E.2d 530 (Ind. 2002). Thus, we cannot say that the trial court ignored a valid mitigator.⁴

In conclusion, the sentencing court found that the asserted mitigating circumstances did not outweigh the aggravating circumstances, but nevertheless rejected the State’s request for a life sentence without parole. Instead, the court imposed the advisory sentence for both the murder and the Class B felony attempted robbery.

The court ordered the sentences to be served consecutively, pointing to the fact that not only was Scott Severns an intended robbery victim but that his companion, Ms. Beelby, was present and was also a victim of the attempted robbery. There were separate harms against more than one person. This justifies the imposition of a consecutive sentence. Serino v. State, 798 N.E.2d 852 (Ind. 2003).

The judgments and sentences imposed upon the convictions are affirmed.

C.J. BAKER, and RILEY, J., concur.

³ At his guilty plea hearing, Finley stated: “I saw the two, and I decided to try to rob ‘em so we could have a bit of money just to spend on whatever.” (Tr. at 22).

⁴ Although Finley does not argue otherwise, the record reflects that the court did take into consideration the fact that Finley pleaded guilty rather than subject the State and the witnesses to a trial.